

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Janik et al.)	Examiner:	Dean, Raymond S.
)		
Serial No.:	10/802,518)	Art Unit:	2684
)		
Filed:	March 16, 2004)	Attny Doc.:	81230.518US1
)		
Title:	System And Method For)		
	Activation Of Portable)		
	And Mobile Media Player)		
	Devices For Wireless)		
	LAN Services)		

SUBSTITUTE APPEAL BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant hereby submits this Appeal Brief in connection with the appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1, 2, 4, 6-10, and 31 which rejection was set forth in the Office Action mailed January 22, 2007. A timely Notice of Appeal was filed.

This Substitute Appeal Brief is being filed to respond to the Notice of Non-compliant Appeal Brief mailed on November 20, 2007.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

I. Real Party In Interest

The real party in interest is Universal Electronics Inc.

II. Related Appeals And Interferences

There are no known related appeals or interferences.

III. Status Of The Claims

In the application claims 1, 2, 4, 6-10, and 31 remain pending.

Claims 3, 5, 11-30, 32, and 33 have been canceled without prejudice.

Claims 1, 2, 4, 6-10, and 31, which have been finally rejected, are the subject of this appeal.

The Section VIII appendix provides a clean, double spaced copy of pending claims 1, 2, 4, 6-10, and 31.

IV. Status Of Amendments

The claims are in condition for appeal – no amendments to the claims are pending.

V. Summary Of The Claimed Subject Matter

With reference to the corresponding U.S. Published Application No. 2004/0242224 the subject matter defined in independent claim 1 is generally directed a content synchronization system, i.e., a system that functions to transfer audio and/or video files such as MP3 files, MPEG files, etc., from a first device to second device. (See paras. 0003, 0036, and 0079). To this end, with reference to Figs. 2-4, the system includes a portable device 10 and a server computer 30 having an associated wireless transmitter 14, wherein the server computer 30 is programmed to cause the wireless transmitter 14 to transmit a signal to initiate an automatic process of content synchronization with the portable device 10 and wherein the signal is caused to be transmitted by

the server computer 30 without regard to the portable device 10 being within a range to receive the signal (*See* paras. 0035, 0047, 0057, and 0058). The portable device 10 has a wireless receiver subsystem 50 comprising a wireless receiver 56/60 and a wireless transceiver subsystem 46, in communication with the wireless receiver subsystem 50, comprising a wireless transceiver 58/88. The wireless receiver subsystem 50 responds to the signal when received by the wireless receiver 56/60 to cause the wireless transceiver subsystem 46 to transition from a standby state to an active state in which the wireless transceiver subsystem 46 uses the wireless transceiver 58/88 to actively perform content synchronization with the server computer 30 and wherein the wireless transceiver subsystem 46 consumes less power in the standby state than in the active state. (*See* paras. 0052-0055 and 0062).

The subject matter defined in dependent claim 31, argued separately, is generally directed to the portable device 10 comprising a synchronization budget manager which limits time during which the wireless transceiver subsystem 50 of the portable device 10 is in the active state as a function of an amount of power which is allowed to be expended on content synchronization. (*See* para. 0052).

VI. Grounds Of Rejection To Be Reviewed On Appeal

In the Office Action of January 22, 2007 claims 1, 2, 4, 6, and 8-10 were rejected under 35 U.S.C. 103(a) as being unpatenable over Walsh (U.S. Publication No. 2003/0050058) in view of Lappetelainen (U.S. Patent No. 7,072,697); claim 7 was rejected under 35 U.S.C. § 103 as being unpatentable over Walsh (U.S. Publication No. 2003/0050058) in view of Lappetelainen (U.S. Patent No. 7,072,697) in further view of Striemer (U.S. Publication No. 2003/0197607); and claim 31 was rejected under 35 U.S.C. § 103 as being unpatentable over Walsh (U.S. Publication No. 2003/0050058) in view of Lappetelainen (U.S.

Patent No. 7,072,697) in further view of Karaoguz (U.S. Published Application No. 2004/0029621).

Of the above grounds of rejection, the Appellant requests that the following grounds of rejection be reviewed in this Appeal:

1. The rejection under 35 U.S.C. § 103 of independent claim 1 based upon Walsh (U.S. Publication No. 2003/0050058) and Lappetelainen (U.S. Patent No. 7,072,697); and

2. The rejection under 35 U.S.C. § 103 of dependent claim 31 based upon Walsh (U.S. Publication No. 2003/0050058); Lappetelainen (U.S. Patent No. 7,072,697); and Karaoguz (U.S. Publication No. 2004/0029621).

VII. Argument

A) Summary Of The Rejection Of The Claims

Independent claim 1 stands rejected under 35 U.S.C. § 103 as being rendered obvious by the combination of Walsh and Lappetelainen. In rejecting the claims it was asserted that Walsh discloses a portable device and a server computer which initiate an automatic process of content synchronization since the system disclosed within Walsh utilizes Bluetooth communications. To support this conclusion, it was noted that the Bluetooth specification describes that, during standby mode a Bluetooth enabled device will listen for inquiry messages and when an access code in an inquiry message matches an access code derived from the identity of the Bluetooth enabled device the devices will transition to an activation mode and synchronize with the master to form a piconet. (See Office Action of Jan. 22, 2007, page 2). While it was acknowledged that Walsh does not disclose a system in which a wireless transceiver system of a mobile device transitions from a standby state to an active state in response to a signal received via a wireless

receiver system, it was asserted that such was disclosed within Lappetelainen. It was then concluded that it would have been obvious to modify Walsh to include the circuitry of Lappetelainen to thereby conserve power.

With respect to the rejection of dependent claim 31, it was asserted that Walsh disclosed the claimed synchronization budget manager since Walsh describes a Bluetooth system and Bluetooth systems synchronize to form a piconet and, as such, “there will be a synchronization budget manager in each of the devices that enables the devices to synchronize with other devices in the piconet.” (See Office Action of Jan. 22, 2007, page 8). While it was acknowledged that the alleged synchronization budget manager of Walsh failed to include time limits as a function of an amount of power which was allowed to be expended on content synchronization, it was asserted that Karaoguz discloses a wireless transceiver subsystem which is in an active state as a function of an amount of power. It was thus concluded that it would have been obvious to modify the synchronization managers of Walsh with the power controller of Karaoguz for the purpose of maximizing battery life.

B) Applicable Law

It is well settled that, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim elements.

C) Argument Concerning The Rejection of Independent Claim 1

The invention of independent claim 1 is generally directed to a server computer driven content synchronization system. As is well understood by those skilled in the art and as is described in the subject application, a content synchronization system is a system that functions *to transfer content*, i.e., audio and/or video files such as MP3 files, MPEG files, etc., from a first device to second device. For example, a content synchronization process is utilized *to transfer audio and/or video files* that have been newly added to a first device to a second device to thereby ensure that the first device and the second device both have the same content.

As further set forth within the claim, the server computer driven content synchronization system also provides for the reservation of power by the portable device to which content is to be automatically transferred from the server computer. To this end, the claimed invention provides for the server computer initiating the automatic content synchronization process with the portable device being maintained in a low power state until such time as the portable device is within communication range of the server computer and the server computer signals the portable device that it is intended to communicate content to the portable device.

Considering now Walsh, it is first respectfully submitted that Walsh is not directed to a system for *automatic content synchronization* as is claimed. Rather, Walsh is directed to a system in which content, i.e., an audio file, is provided from a server computer to a portable device on the command of the portable device and merely for the purpose of allowing for the immediate playback by the portable device of any content so received from the server. That Walsh in not directed to automatic content synchronization has, in fact, been acknowledged by the Office. (See Office Action of Jan. 22, 2007, page 2). In this regard, it has been acknowledged that, as concerns the downloading of content from the server computer to the

portable device for playback within the system of Walsh, the actual downloading of *the content* from the server device to the portable device is initiated by a user manually interacting with the portable device. Accordingly, since the system of Walsh requires a user to manually initiate the actual downloading of content to a portable device from the server computer, it will be appreciated that the system of Walsh not only fails to be server computer driven but also fails to provide for an automatic initiation of *content synchronization* as is claimed.

While the Office has acknowledged that Walsh discloses a system in which the portable device is manually activated to initiate the actual downloading of content from the server, the Office has nevertheless taken the position that, based upon the Bluetooth specification and particularly the described transition of a Bluetooth device to an activation mode and synchronization with a master to form a piconet, Walsh somehow discloses the automatic initiation of content synchronization. In response it is respectfully submitted that the Bluetooth specification reveals that synchronization “to form a piconet” *has no relevance to the initiation of content synchronization*, i.e., the initiation of the transference of audio and/or video files between device, but is instead directed to nothing more than signal clocking and spread spectrum frequency hopping coordination to thereby establish a communication channel:

During typical operation a physical radio channel is shared by a group of devices which are synchronized to a common clock and frequency hopping pattern. One device provides the synchronization reference and is known as the master. All other devices are known as slaves. A group of devices synchronized in this fashion forms a piconet.

(Bluetooth Specification 2.0, Architecture and Terminology Overview, Vol. 1, Part A, Page 13, Section 1.1 “Overview of Operation.” Bluetooth SIG, Inc. 4 November 2004).

Accordingly, since in Walsh the forming of a *clock synchronized* piconet, i.e., the forming of a synchronized communication channel by which content may be transferred, has no relevance to the initiation of *content synchronization*, i.e., the initiation of the transference of audio and/or

video file from a server to a mobile device via a synchronized communication channel, and since in Walsh the portable device is acknowledged to be responsible for initiating the downloading of content from the server for playback via a formed piconet as opposed to a server initiating content synchronization as is claimed, it is respectfully submitted that Walsh simply fails to disclose even the base elements of the invention claimed. For at least this reason it is respectfully submitted that the combination of Walsh and Lappetelainen cannot be said to include all of the elements claimed as is required of a *prima facie* case of obviousness and the rejection of claim 1 under 35 U.S.C. § 103 must be withdrawn.

Considering now Lappetelainen, it is respectfully submitted that Lappetelainen does not “teach a Bluetooth system” at Col. 2, lines 21-25 cited to in the rejection of the claims. Rather, Col. 2, lines 21-25 merely refers to devices which might interfere with an RF transponder. Yet further, it is respectfully submitted that, when the objectives of Lappetelainen are considered, it will be appreciated that Lappetelainen clearly teaches against using the Bluetooth activation mode and synchronization with a master to form a piconet that is relied upon in the first instance as a reason for rejecting the claims. Specifically, Lappetelainen alludes to the fact that the protocol overhead and ensuing power consumption involved in establishing a clock synchronized piconet each time a Bluetooth system device wakes works directly against the stated desire of Lappetelainen, e.g., to save battery power. (See Col. 1, lines 36+). Accordingly, for the still further reason that the teachings of Lappetelainen are in conflict with the features of the system of Walsh relied upon in the rejection of the claims in the first instance, i.e., Lappetelainen suggests that establishing a clock synchronized piconet in the manner relied upon in the rejection of the claims is undesirable, it is respectfully submitted that the combination of Walsh and Lappetelainen cannot be said to present a *prima facie* case of obviousness and the rejection of

claim 1 under 35 U.S.C. § 103 must be withdrawn.

D) Argument Concerning The Rejection of Dependent Claim 31

While the rejection of claim 31 makes reference to the Bluetooth “synchronous connection oriented” (SCO) logical transport and infers from this that members of a piconet, such as disclosed within Walsh, would necessarily include “synchronization budget managers,” it is respectfully submitted that this conclusion similarly fails to distinguish between the term “synchronization” as used in the data *transmission* art versus the term “synchronization” as used in the data *management* art which is the art that is relevant to that which is claimed. In this regard, referring again to the Bluetooth specification, it is described that synchronous connection oriented (SCO) logical transports “...carry 64 kb/s of information synchronized with the piconet clock. Typically this information is an encoded voice stream.” (Bluetooth Specification 2.0, Architecture and Terminology Overview, Volume 1, Part A, Page 45, Section 3.5.5 “Synchronous Connection Oriented”. Bluetooth SIG, Inc. 4 November 2004.)¹ From this fair reading of the Bluetooth specification it will be appreciated that the SCO reference within the Bluetooth specification is concerned with nothing more than synchronization of data clocking and not with content synchronization let alone budgeting for content synchronization as is claimed. Thus, since nothing from Walsh or the Bluetooth specification can be said to disclose or even contemplate the concept of content synchronization budget management it is respectfully submitted that the combination of Walsh, Lappetelainen, Karaoguz cannot be said to disclose all of the elements claimed as is required of a *prima facie* case of obviousness, i.e., Walsh does not

¹ “3.5.5 Synchronous connection-oriented (SCO)- The synchronous connection-oriented (SCO) logical transport is a symmetric, point-to-point channel between the master and a specific slave. The SCO logical transport reserves slots on the physical channel and can therefore be considered as a circuit-switched connection between the master and the slave. SCO logical transports carry 64 kb/s of information synchronized with the piconet clock. Typically this information is an encoded voice stream. Three different SCO configurations exist, offering a balance between robustness, delay and bandwidth consumption.”

disclose a synchronization budget manager to be modified in the first instance. For at least this reason it is respectfully submitted that the rejection of claim 31 under 35 U.S.C. § 103 must be withdrawn.

E) Conclusion

In sum, it is respectfully submitted that the mere disclosure within Walsh of the use of Bluetooth cannot be said to disclose, teach, or suggest content synchronization in the manner that is expressly claimed. While Walsh may describe the use of Bluetooth as an exemplary communication protocol for his jukebox controller and the Bluetooth specification may refer to "synchronization," it is respectfully submitted that it cannot be ignored that clock synchronization and content synchronization are entirely different concepts in the art and that one of ordinary skill in the art would not, under ANY interpretation, read creating a *clock synchronized piconet for the purpose of transferring data* on the claimed automatic initiation of data transference via such a communication channel, i.e., content synchronization, as has been asserted (See Advisory Action of March 6, 2007). Furthermore, it is respectfully noted that, while higher levels of the Bluetooth specification do introduce the concept of content synchronization, this is not required to be part of the discovery and piconet formation process and is, in fact, always initiated by the client device and not by a server computer as is claimed.²

For all of these reasons it is respectfully submitted that the application is in good and

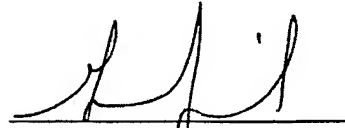
² "4.4 AUTOMATIC SYNCHRONIZATION FEATURE: In this feature, the IrMC Client can start the synchronization when the IrMC Server enters the RF proximity of the IrMC Client. Basically, this means that, on the Baseband level, the IrMC Client pings the IrMC Server at intervals and, when it finds that the IrMC Server is in the range, the IrMC Client can begin synchronization." (Bluetooth Profile Specifications, Part K13, Synchronization Profile, Paragraph 4.4. Bluetooth SIG Inc, 22 February 2001)

proper form for allowance. Such action of the part of the Board is respectfully requested.

Respectfully Submitted;

Date: December 6, 2007

By:

A handwritten signature in black ink, appearing to read 'G. Jarosik', written over a horizontal line.

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VIII. Claims Appendix

The following is a clean copy of the claims involved in the appeal:

1. A system comprising:

a portable device; and

a server computer having an associated wireless transmitter, wherein the server computer is programmed to cause the wireless transmitter to transmit a signal to initiate an automatic process of content synchronization with the portable device and wherein the signal is caused to be transmitted by the server computer without regard to the portable device being within a range to receive the signal; and

wherein the portable device comprises:

a wireless receiver subsystem comprising a wireless receiver; and

a wireless transceiver subsystem, in communication with the wireless receiver subsystem, comprising a wireless transceiver;

wherein the wireless receiver subsystem responds to the signal when received by the wireless receiver to cause the wireless transceiver subsystem to transition from a standby state to an active state in which the wireless transceiver subsystem uses the wireless transceiver to actively perform content synchronization with the server computer and wherein the wireless transceiver subsystem consumes less power in the standby state than in the active state.

2. The system of claim 1, wherein the wireless transmitter is physically coupled to the server computer.

4. The system of claim 1, wherein the server computer causes the wireless transmitter to transmit the signal periodically until the portable device responds to the signal.
6. The system of claim 1, wherein the wireless receiver includes a radio frequency (RF) receiver and the wireless transmitter includes a RF transmitter.
7. The system of claim 1, wherein the wireless receiver includes a pager network receiver.
8. The system of claim 1, wherein the wireless receiver includes a mobile cellular phone network receiver.
9. The system of claim 1, wherein the wireless transceiver includes a wireless local area network (WLAN) transceiver.
10. The system of claim 1, wherein the server computer includes a personal computer.
31. The system as recited in claim 1, wherein the portable device comprises a synchronization budget manager which limits time during which the wireless transceiver subsystem of the portable device is in the active state as a function of an amount of power which is allowed to be expended on content synchronization.

IX. Evidence Appendix

No evidence is being submitted herewith.

X. Related Proceedings Appendix

No copies of decisions rendered by a court or the Board are being submitted herewith.

CHI 56698050v4